

Message Text

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ACTION EB-08

INFO OCT-01 EUR-12 ISO-00 CAB-02 CIAE-00 COME-00
DODE-00 DOTE-00 INR-10 NSAE-00 FAA-00 L-03 INRE-00
SSO-00 ARA-10 SS-15 NSCE-00 /061 W
-----072118 281856Z /42

O R 281825Z JUN 78
FM AMEMBASSY PARIS
TO SECSTATE WASHDC IMMEDIATE 4009
INFO AMEMBASSY LIMA IMMEDIATE
AMEMBASSY BONN
AMEMBASSY LONDON

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DEPT PASS CAB FARMER AND DOT KUTSKE

LIMA FOR ATWOOD

FROM LEE MARKS, CHAIRMAN, U.S. DEL

E.O. 11652: N/A
TAGS: EAIR, FR
SUBJ: CIVAIR -- PAN AM CHANGE OF GAUGE

U.S. DEL MET FOR THREE HOURS WITH FRENCH DEL, HEADED
BY DE LA CHARRIERE, DIRECTOR, BUREAU OF LEGAL AFFAIRS,
QUAI D'ORSAY.

1. FRENCH PROPOSED ARBITRATION FOR EIGHT MONTHS, THEN
BACKED DOWN TO JANUARY 8, 1979, AS PROPOSED DECISION
DATE. FRENCH WERE ADAMANT THAT U.S. PROPOSAL WAS
EXCESSIVELY RAPID AND THAT EVEN JANUARY DEADLINE WOULD
BE UNPRECEDENTED.

2. FOR INTERIM, FRENCH PROPOSED STATUS QUO TO AUGUST 2;
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THAT PAN AM ENJOY CHANGE OF GAUGE FROM AUGUST 3 TO
OCTOBER 31; THAT PAN AM NOT ENJOY CHANGE OF GAUGE FOR
FIRST HALF OF REMAINING TIME TO JANUARY 8, 1979, AND
ENJOY CHANGE OF GAUGE FOR LAST HALF.

3. ALTERNATIVELY, FRENCH PROPOSED STATUS QUO TO
AUGUST 2, UNRESTRICTED CHANGE OF GAUGE FROM AUGUST 3 TO

OCTOBER 31, AND "PARTIAL" CHANGE OF GAUGE FROM NOVEMBER 1 TO DECISION DATE. FRENCH DEFINED "PARTIAL" CHANGE OF GAUGE AS PERMITTING THREE CHANGE OF GAUGE FLIGHTS PER WEEK IN CONTRAST TO PAA SCHEDULES PROVIDING FOR SIX.

4. FRENCH PROPOSALS PARAS 2 AND 3 ABOVE ASSUME WITHDRAWAL OF 213.

5. FRENCH WANT TO ARBITRATE PART 213 EVEN IF IT IS WITHDRAWN BECAUSE PHASE I, WHICH HAS BEEN IMPLEMENTED, IS ITSELF UNLAWFUL (THEY SAY) AND BECAUSE THE THREAT OF PHASE II IS UNLAWFUL. (CHARRIERE QUOTED UN CHARTER TO THIS EFFECT.) WE SAID WE HAD UNDERSTOOD FRENCH DESIRE TO ARBITRATE 213 IF PHASE II BECAME EFFECTIVE, BUT HAD ASSUMED THAT AGREEMENT ON INTERIM ARRANGEMENTS WOULD MOOT 213. WE DID NOT CONCEDE THAT WE WOULD ARBITRATE ANY ASPECT OF 213, BUT TRIED TO AVOID LETTING FRENCH KNOW HOW IMPORTANT IT WAS TO US TO AVOID ARBITRATING THIS ISSUE.

6. FRENCH ALSO PROPOSE TO ARGUE THAT ARBITRATION IS PREMATURE BEFORE FINAL FRENCH TRIBUNAL RULING ON PAN AM CASE ON GROUND OF EXHAUSTION OF LOCAL REMEDIES. FRENCH BELIEVE THAT IF THEY PREVAIL ON THIS ISSUE, AND FRENCH TRIBUNAL HAS NOT YET RULED, ARBITRATION TRIBUNAL WOULD LIMITED OFFICIAL USE

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ADJOURN PENDING FINAL RULING. U.S. DEL OBSERVED THAT THIS PUT LENGTH OF INTERIM MEASURES IN HANDS OF FRENCH TRIBUNAL AND BEYOND CONTROL OF U.S. AND FRENCH.

7. THE FRENCH POSITIONS, CAPSULIZED ABOVE BUT ARGUED AT GREAT LENGTH, CAME AS A SURPRISE. FRENCH KEPT INSISTING THAT THEY WERE ACCEPTING THE "PRINCIPLE OF BALANCED EQUILIBRIUM" ADVANCED BY US, BUT WE NOTED THAT THE PRINCIPLE WAS INSEPARABLE FROM A TWELVE-WEEK ARBITRATION. IT IS NOT CLEAR WHETHER FRENCH WISH TO SCUTTLE ARBITRATION AND NEGOTIATE CHANGE OF GAUGE OR WHETHER AGREEMENT CAN BE REACHED ON A COMPROMIS.

8. U.S. DEL FINDS FRENCH POSITIONS ON 213 AND EXHAUSTION OF LOCAL REMEDIES UNACCEPTABLE. THE PROPOSAL IN PARA 2 ABOVE IS ALSO UNACCEPTABLE FOR OBVIOUS REASONS.

9. WE WOULD, HOWEVER, LIKE TO EXPLORE A VARIATION OF PROPOSAL IN PARA 3. SUPPOSE WE AGREED ON ARBITRATION ENDING ON OCTOBER 31 (FOUR MONTHS INSTEAD OF THREE) AND AGREED THAT PAN AM COULD ENJOY CHANGE OF GAUGE

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BEGINNING JULY 12, AS OPENING POSITION, OR PERHAPS
SOME LATER DATE UP TO AND INCLUDING AUGUST 3 (WHICH IS
MID-POINT BETWEEN MAY 3 AND OCTOBER 31). WE WOULD FUR-
THER AGREE THAT IF ARBITRATION TRIBUNAL WAS SIMPLY
UNABLE TO RENDER DECISION BY OCTOBER 31, PAN AM WOULD
ENJOY CHANGE OF GAUGE ONLY THREE TIMES A WEEK THERE-
AFTER UNTIL DECISION RENDERED (BUT WITH SOME OUTSIDE
DATE). THIS COULD RAISE PROBLEMS OF PRECEDENT AND
PRINCIPLE AS A CONTROL ON CAPACITY, BUT WE MIGHT BE
ABLE TO DEAL WITH THOSE BY WORDING COMPROMIS IN TERMS
OF U.S. ADVICE TO FRANCE THAT PAN AM DID NOT INTEND TO
OPERATE FLIGHTS IN EXCESS OF SIX IN WINTER SEASON.
(WE DON'T KNOW IF THAT'S TRUE.) BOARD WOULD SUSPEND
APPLICATION OF 213 UNTIL PAN AM COMMENCED FLYING, AND
THEN WITHDRAW IT.

10. IN LIGHT OF THE WAY MEETING DEVELOPED, COMINGLING
ISSUE DID NOT ARISE. IF WE ARE CLOSE TO AGREEMENT ON
OTHER ISSUES, WHICH NOW SEEMS UNLIKELY, WE WILL
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CLARIFY COMINGLING, BUT OTHERWISE WE WILL NOT.

11. PLEASE REPLY IMMEDIATE SLUGGED FOR MARKS --
DELIVER TO MINECON AT OPENING OF BUSINESS JUNE 29.
HARTMAN

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